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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT SEATTLE

9                   ELIO DIEGUEZ FRIAS, a/k/a Carlos Diaz,

10                  Plaintiff,

11                  Case No. C14-1690-JCC-JPD

12                  v.

13                   DARRYL TAYLOR, *et al.*,

14                  Defendants.

15                   REPORT AND RECOMMENDATION

16                   INTRODUCTION AND SUMMARY CONCLUSION

17                  This is a *pro se* civil action filed by King County prisoner Elio Frias. Plaintiff has been  
18 granted leave to proceed with this action *in forma pauperis*. Service has not been ordered. This  
19 Court, having reviewed plaintiff's complaint, and the balance of the record, concludes that  
20 plaintiff has failed to state a cognizable ground for relief in this action. This Court therefore  
recommends that plaintiff's complaint and this action be dismissed, without prejudice, pursuant  
to 28 U.S.C. § 1915(e)(2)(B).

21                   DISCUSSION

22                  On November 3, 2014, plaintiff presented to this Court for filing a civil rights complaint  
23 under 42 U.S.C. § 1983 in which he asserted that he was assaulted and seriously injured by a

1 King County Metro Transit driver in March 2013. (*See* Dkt. 1-1.) Plaintiff claimed that he  
2 boarded a Metro Transit bus on March 12, 2013 and the driver began to argue with him because  
3 he was “a little inebriated.” (*Id.* at 3.) The driver told plaintiff he wanted him off the bus, but  
4 plaintiff refused and requested that the police be called. (*Id.*) Plaintiff asserted that rather than  
5 call the police, the bus driver threw him off the top steps of the bus and he landed on the  
6 sidewalk where he hit his head on the concrete and passed out. (*Id.*) Plaintiff stated that he  
7 woke up a few days later at Harborview Medical Center where he was being treated for a  
8 subdural hematoma. (*Id.*) Plaintiff identified Metro Transit driver Darryl Taylor, Seattle City  
9 Hall, and King County Metro Transit as defendants in his complaint. (*Id.* at 1.) Plaintiff  
10 requested compensatory damages in the amount of \$2,000, and punitive damages in the amount  
11 of \$2,000,000.

12 After reviewing plaintiff’s complaint, this Court determined that plaintiff had not stated a  
13 cognizable ground for relief under § 1983 and, thus, the Court issued an Order directing plaintiff  
14 to show cause why this action should not be dismissed. (Dkt. 8.) Plaintiff was advised in the  
15 Order to Show Cause that in order to sustain a civil rights action under § 1983, a plaintiff must  
16 show (1) that he suffered a violation of rights protected by the Constitution or created by federal  
17 statute, and (2) that the violation was proximately caused by a person acting under color of state  
18 or federal law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9<sup>th</sup> Cir. 1991). The Court noted  
19 that plaintiff had not identified in his complaint the federal constitutional right he believed was  
20 violated by the conduct of the named defendants, and that the facts alleged in the complaint did  
21 not suggest that any of the named defendants had caused plaintiff harm of federal constitutional  
22 dimension. The Court further noted that plaintiff’s claim that he was assaulted by a Metro  
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1 Transit driver implicated state tort law, rather than federal constitutional law, and that such  
2 claims could not be pursued independently in an action brought under § 1983.

3 Plaintiff filed a timely response to the Order to Show Cause on December 9, 2014  
4 together with a motion seeking leave to amend his complaint. (Dkts. 9 and 10.) Plaintiff  
5 indicates in his response that he did not intend to proceed with this action under § 1983, he  
6 merely filled out the form provided to him by the Clerk of Court. Plaintiff states that his  
7 intention has always been to proceed under tort law and, in the proposed amended complaint  
8 contained within plaintiff's motion to amend, he specifically asserts jurisdiction under the  
9 Washington Tort Claim Act. (See Dkt. 9 at 3-4, Dkt. 10 at 3.)

10 Plaintiff's response to this Court's Order to Show Cause, together with his proposed  
11 amended complaint, make clear that this Court lacks jurisdiction over the claim plaintiff intends  
12 to assert in this action. Because plaintiff asserts a claim arising under state law rather than  
13 federal law, this Court would have jurisdiction over plaintiff's claim only if he could establish  
14 diversity of citizenship between the parties. *See* 28 U.S.C. §§ 1331, 1332. It is clear from  
15 plaintiff's submissions that all proposed parties to this action either reside in, or are otherwise  
16 located in, the State of Washington and, thus, that there is no diversity of citizenship between the  
17 parties. Accordingly, this Court lacks jurisdiction over plaintiff's claim.

## CONCLUSION

19 As plaintiff has not alleged in his original complaint or in his proposed amended  
20 complaint any claim over which this Court has jurisdiction, the undersigned recommends that  
21 plaintiff's complaint and this action be dismissed without prejudice, prior to service, under  
22 § 1915(e)(2)(B). This Court further recommends that plaintiff's motion for leave to amend be  
23 stricken as moot. A proposed order accompanies this Report and Recommendation.

Objections to this Report and Recommendation, if any, should be filed with the Clerk and served upon all parties to this suit by no later than **February 11, 2015**. Failure to file objections within the specified time may affect your right to appeal. Objections should be noted for consideration on the District Judge's motion calendar for the third Friday after they are filed. Responses to objections may be filed within **fourteen (14)** days after service of objections. If no timely objections are filed, the matter will be ready for consideration by the District Judge on **February 13, 2015**.

This Report and Recommendation is not an appealable order. Thus, a notice of appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the assigned District Judge acts on this Report and Recommendation.

DATED this 21st day of January, 2015.

*James P. Donohue*  
JAMES P. DONOHUE  
United States Magistrate Judge